

NO. 22052

IN THE SUPREME COURT OF THE STATE OF HAWAII

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CHARLES L. RAPOZA, as Special Administrator of the Estate of CHARLES L. RAPOZA, JR., Deceased; CHARLA PUA LINDSEY, as Next Friend of CHAE-LYNN KEALAPUA LINDSEY; CHARLES RAPOZA, SR.; THERESA HOLICEK; and CASEY SOUZA, Plaintiffs-Appellants

vs.

WILLOCKS CONSTRUCTION CORPORATION, a Hawai'i corporation, Defendants-Appellees

and

JOHN DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; and DOE ENTITIES 1-10, Defendants  
(CIV. NO. 96-026K)

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CHARLES L. RAPOZA, as Special Administrator of the Estate of CHARLES L. RAPOZA, JR., Deceased; CHARLA PUA LINDSEY, as Next Friend of CHAE-LYNN KEALAPUA LINDSEY; CHARLES RAPOZA, SR.; THERESA HOLICEK; and CASEY SOUZA, Plaintiffs-Appellants

vs.

KARL MILTON TAFT; JON GOMES; JON GOMES & ASSOCIATES, INC., a Hawai'i corporation; ABRAHAM LEE; ABE LEE DEVELOPMENT, INC., a Hawai'i corporation; KALAOA DEVELOPMENT, INC., a Hawai'i corporation; KALAOA JOINT VENTURE, a Hawai'i General Partnership in Dissolution; KALAOA PARTNERS, INC., a Hawai'i corporation; HAWAII ELECTRIC LIGHT COMPANY, INC., a Hawai'i corporation, Defendants-Appellees

and

JOHN DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; and DOE ENTITIES 1-10, Defendants

and

JON GOMES, JON GOMES & ASSOCIATES, INC., ABRAHAM LEE, ABE LEE DEVELOPMENT, INC., KALAOA DEVELOPMENT, INC., KALAOA JOINT VENTURE, DBA KALAOA PARTNERS, Third-Party Plaintiffs-Appellees

vs.

WILLOCKS CONSTRUCTION CORPORATION, a Hawai'i corporation,  
Third-Party Defendant-Appellee

and

JOHN DOES 1-10; DOE PARTNERSHIPS 1-10; DOE  
CORPORATIONS 1-10; and DOE ENTITIES 1-10,  
Third-Party Defendants  
(CIV. NO. 96-286K)

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APPEAL FROM THE THIRD CIRCUIT COURT  
(CIV. NOS. 96-026K & 96-286K)

ORDER DENYING MOTION FOR RECONSIDERATION  
(By: Acoba, J.; With Moon, C.J., Levinson,  
Nakayama, and Duffy, JJ., Concurring Separately)

With respect to the motion for reconsideration filed by Defendant-Appellee Karl Milton Taft on January 8, 2004, the memorandum opinion explains that in order to determine liability under Hawai'i Revised Statutes (HRS) § 386-5, it is incorrect to simply rely on the definition of employee. The memorandum opinion states that in order to be considered an employer under chapter 386, "a person must be the recipient of services pursuant to a 'contract of hire or apprenticeship.'" Iddings v. Mee-Lee, 82 Hawai'i 1, 15, 919 P.2d 263, 277, (1996). Consequently, the memorandum opinion stated that "[b]ecause the record on summary judgment failed to establish that Taft was the employer of Rapoza, Taft was not immunized under HRS § 386-5 and summary judgment should not have been granted on that ground." Rapoza v. Willocks Constr. Corp., No. 22052 (Haw. Jan. 2, 2004) (mem.) at 15. Therefore,

IT IS HEREBY ORDERED that the motion is denied.

DATED: Honolulu, Hawai'i January 29, 2004.

M. Tyler Pottenger  
for defendant-appellant  
Karl Milton Taft,  
on the motion.

Not having joined in the memorandum opinion of which reconsideration is being sought, and having concurred only in the result reached by the memorandum opinion, I take no position with respect to the explanatory language of the order denying motion for reconsideration but agree that the motion for reconsideration should be denied.